



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,752	12/04/2003	Loren Dean	MWS-034	3180
74321 7590 09/08/2008 LAHIVE & COCKFIELD, LLP/THE MATHWORKS FLOOR 30, SUITE 3000 One Post Office Square Boston, MA 02109-2127				
EXAMINER				
TRUONG, LECHI				
ART UNIT		PAPER NUMBER		
2194				
MAIL DATE		DELIVERY MODE		
09/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/729,752

Applicant(s)

DEAN ET AL.

Examiner

LECHI TRUONG

Art Unit

2194

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-3-6 and 10-46.
Claim(s) withdrawn from consideration: 2 and 7-9.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Meng-Ai An/
Supervisory Patent Examiner, Art Unit 2195

Continuation of 11, does NOT place the application in condition for allowance because:

1. Applicant amendment filed on 08/28/2008 has been considered but they are not persuasive:
Applicant argued in substance that:
(1) "Brumley does not disclose or suggest that the interpreters can establish a communication channel with the DAQ device independent of the interface protocol of the image acquisition device".
(2) " Brumley and Beck, alone or in any reasonable combination, do not disclose or suggest establishing a second communication link between the image acquisition engine and interface of the selected image acquisition device using a communication channel operating independent of an interface protocol of the selected image acquisition device".
2. Examiner respectfully disagreed with Applicant's remarks:

As to the point (1), Brumley teaches the various primitives control the corresponding hardware resources on the DAQ device. For example, the WFM Engine controls waveform resources on the DAQ device, and the AO Channel primitives control the respective Analog output channels on the DAQ device. In other words, the respective primitives program or read/write respective registers on the DAQ device, such as the DAQ board 104, to program or control the board 104 for the desired functionality(col 12, ln 5-12)/ The mini-driver primitive is also independent of interpreters' APIs and their limitations. In other words, a mini-driver primitive is preferably written independently of any Interpreter API being implemented, col 18, ln 46-51/ Mini-driver Primitives exported by the driver each act as a programmable, independent, functionality specific engine for the driver(col 23, ln 32-35)/ The Mini-driver interface, while being user-level API independent, is able to work with any high-level API exported by DAQ driver level software (col 25, ln 57-60)/ The DAQ driver level software receives calls from DAQ user application and is executable to control the DAQ device, col 3, ln 6-10/ The DAQ driver level software also include a plurality of mini-driver primitives. Each of the mini-driver primitives performs a portion of controlling the DAQ device, (col 3, ln 21-25).

As to the point 2, Brumley teaches The DAQ driver level software receives calls[second communication link] from DAQ user application and is executable to control the DAQ device, col 3, ln 6-10/ The DAQ driver level software also include a plurality of mini-driver primitives. Each of the mini-driver primitives performs a portion of controlling the DAQ device, (col 3, ln 21-25)/ If the call is determined to be a vectored call in step 226, then in step 232 the DAQ driver level software determines which DAQ device [selected image acquisition device] will receive the call, col 11, ln 1-5/ The mini-driver primitive is also independent of interpreters' APIs and their limitations. In other words, a mini-driver primitive is preferably written independently of any Interpreter API being implemented [independent of an interface protocol] (col 18, ln 46-51).